

REMARKS

Claims 1-18 are pending and await further action on the merits. Claims 1-9, 15, 16 and 18 have been withdrawn from consideration as being drawn to nonelected subject matter.

Claims 11-17 have been amended so as to replace the word "compound" with the phrase "substituted 6-(2-halogenphenyl)-triazolopyrimidine" for clarity. Claims 2-6, 8, 9 and 18 have been amended in like manner.

No new matter has been added by way of the above-amendment.

I. Rejection under 35 USC 112 (paragraph two)

Claims 11-14 and 17 stand rejected under 35 USC 112 (paragraph two) as not distinctly claiming the invention. Applicants respectfully traverse the rejection.

The Examiner has taken the position that the phrase "the compound" in claims 11-17 does not have antecedent basis in claim 10. In response, Applicants have amended claims 11-17 by replacing the word "compound" with the phrase "substituted 6-(2-halogenphenyl)-triazolopyrimidine" for clarity.

The Examiner objects to claim 17. Specifically, the Examiner states:

Claim 17 is indefinite. The recitation of an intended use, chemical activity, or functional description of some "additional" property for a compound (or moiety/functionality attached to a chemical core) or a composition containing same in a dependent claim, must result in a tangible structural difference between the product and of the independent claim and the product set forth in the dependent claim. In the absence of said structural difference between the product of the independent claim and that of the dependent claim, said dependent claim is seen to be a substantial duplicate, and said recitation is not afforded critical weight and fails to further limit the product in said dependent claim. In the instant claim, claim 17 fails to further limit the composition with the phrase "suitable for controlling phytopathogenic fungi" therefore it is afforded no patentable weight. Appropriate correction is required. (Emphasis added).

Applicants respectfully submit that subject matter of claim 17 does have a tangible structural difference from the subject matter of claim 10. Claim 10 is drawn to:

(A) The substituted 6-(2-halogenphenyl)-triazolopyrimidine.

This is in distinction to claim 17 which is drawn to:

(A) The substituted 6-(2-halogenphenyl)-triazolopyrimidine; and  
(B) A solid or liquid carrier.

Applicants respectfully submit that the "solid or liquid carrier" of claim 17 is a tangible structural difference from the subject matter of claim 10.

In view of the foregoing, Applicants respectfully submit that the claims, as presently amended, particularly point out and distinctly claim the subject matter which Applicants regard as the invention. As such, withdrawal of the rejection is respectfully requested.

### **II. Double Patenting Rejection**

Claims 10-14 and 17 stand provisionally rejected under the ground of obviousness-type double patenting over claim 1 of U.S. publication 2007/0078149. Applicants respectfully traverse the rejection.

Applicants note that the instant application has an earlier filing date than that of the noted publication. Accordingly, the Examiner should let the present application issue, and if any double patenting issues remain, they should be handled in the noted publication by amendment or Terminal Disclaimer.

### **III. Allowable Subject Matter**

Applicants note with appreciation that the Examiner has indicated that claim 10 is allowed.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Conclusion

In view of the above remarks, it is believed that claims are allowable.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Garth M. Dahlen, Ph.D., Esq., Reg. No. 43,575 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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